GOODSILL ANDERSON QUINN & STIFEL A LIMITED LIABILITY LAW PARTNERSHIP LLP

JOHN R. LACY

1397-0

ilacy@goodsill.com

EVELYN J. BLACK

4362-0

eblack@goodsill.com

RANDOLF L. M. BALDEMOR 7421-0

rbaldemor@goodsill.com

Case 1:04-cv-00570-HG-BMK

Alii Place, Suite 1800

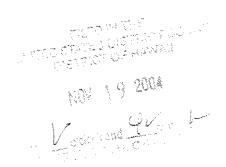
1099 Alakea Street

Honolulu, Hawaii 96813

Telephone: (808) 547-5600 Facsimile: (808) 547-5880

Attorneys for Defendant

BLUE DOLPHIN CHARTERS, LTD.



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII

MATTHEW ISHAM, individually and as Guardian ad Litem for HAYDEN ISHAM, a minor; ROXANNE BEST ISHAM.

Plaintiffs,

VS.

BLUE DOLPHIN CHARTERS, LTD. and BLUE DOLPHIN DIVING, LTD., CAPTAIN ANDY'S SAILING, INC., DOES 1-105,

Defendants.

CIVIL NO. CV04-00559 ACK/KSC

DEFENDANT BLUE DOLPHIN CHARTERS, LTD.'S ANSWER TO SEAMAN'S COMPLAINT FOR DAMAGES FOR PERSONAL INJURIES UNDER THE JONES ACT AND THE GENERAL MARITIME LAW, COMPLAINT FOR PERSONAL INJURY DAMAGES, LOSS OF CONSORTIUM, FILED ON **SEPTEMBER 14, 2004**; DEFENDANT BLUE DOLPHIN CHARTERS, LTD.'S CROSS-CLAIM AGAINST DEFENDANT CAPTAIN ANDY'S SAILING, INC.; AND CERTIFICATE OF **SERVICE**

DEFENDANT BLUE DOLPHIN CHARTERS, LTD.'S ANSWER TO SEAMAN'S COMPLAINT FOR DAMAGES FOR PERSONAL INJURIES UNDER THE JONES ACT AND THE GENERAL MARITIME LAW, COMPLAINT FOR PERSONAL INJURY DAMAGES, LOSS OF CONSORTIUM FILED ON SEPTEMBER 14, 2004

COMES NOW, Defendant BLUE DOLPHIN CHARTERS, LTD. ("Defendant"), by and through its attorneys, GOODSILL ANDERSON QUINN & STIFEL, a Limited Liability Law Partnership LLP, and answers the Seaman's Complaint for Damages for Personal Injuries Under the Jones Act and the General Maritime Law, Complaint for Personal Injury Damages, Loss of Consortium, filed on September 14, 2004 (the "Complaint"), as follows:

FIRST DEFENSE

PRELIMINARY ALLEGATIONS

- Defendant is without information sufficient to form a belief as 1. to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same.
- In response to Paragraph 2 of the Complaint, Defendant admits 2. that BLUE DOLPHIN CHARTERS, LTD. is a Hawaii corporation, doing business in Hawaii, with its principal place of business on the Island of Kauai. Defendant denies any and all remaining allegations of said Paragraph 2.

NINTH DEFENSE

Defendant will rely upon the Primary Duty Rule. **3**9.

TENTH DEFENSE

Defendant pleads and is entitled to and hereby claims the 40. benefits of the Limitation of Shipowner's Liability Act, 46 U.S.C. App. §183 et seq. and all acts amendatory thereof and supplemental thereto.

ELEVENTH DEFENSE

The accident and injuries alleged were caused by an Act of 41. God.

TWELFTH DEFENSE

Defendant will rely upon the defenses of superseding, 42. supervening and/or intervening cause.

THIRTEENTH DEFENSE

43. Defendant will rely upon the defenses of waiver and estoppel.

FOURTEENTH DEFENSE

Plaintiffs' claims are preempted by federal law. 44

FIFTEENTH DEFENSE

Defendant gives notice that it may assert any other matter 45. constituting an avoidance or an affirmative defense to the extent a factual basis therefore is disclosed through further investigation and discovery.